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Government
Publications

National Energy Board



Non-Hearing Procedures



Under its act and regulations, the National Energy Board is authorized to approve certain classes of application without a public hearing. These classes are listed, their limits are defined, and procedures used for their consideration are described.

Information Bulletin 3

November 1983

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NON-HEARING PROCEEDINGS

THE BOARD

The National Energy Board is an independent federal agency that was created by the Parliament of Canada in 1959. The Board's prime function is to regulate certain areas of the oil, natural gas, and electrical utility industries. Its powers and jurisdiction are based on the National Energy Board Act. Copies of the Act are available from the Canadian Government Publishing Centre, Supply and Services Canada, Ottawa, K1A 0S9 (Price: Canada \$2.75; other countries \$3.30, prices subject to change).

PUBLICATIONS

This information bulletin is one of a series that the Board is publishing on its activities and procedures. Comments on this bulletin or suggestions for future topics would be most welcome.

These bulletins provide general information only. For exact details on particular items, see the relevant legislation.

Cat. No. NE12-3/3E
ISSN 0825-0170

**This Information Bulletin is published separately
in both official languages.**

For further information, please contact:

Mrs. Ann Sicotte
Chief of Information Services
National Energy Board
473 Albert Street
Ottawa, Canada
K1A 0E5

(613) 992-3972
Telex: (NEB OTT) 053-3791

No. du cat. NE12-3/3F
ISSN 0825-0189

**Ce Bulletin d'information est publié séparément
dans les deux langues officielles.**

Pour de plus amples renseignements,
veuillez communiquer avec:

Mme Ann Sicotte
Chef des services d'information
Office national de l'énergie
473, rue Albert
Ottawa (Canada)
K1A 0E5

(613) 992-3972
Télex: (ONE OTT) 053-3791



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NON-HEARING PROCEDURES

CLASSES OF APPLICATION

Applications to the Board of the following general classes are normally considered without a public hearing:

- Construction of minor facilities
- Minor exports and imports of energy products
- Emergency exports of natural gas or electricity
- Emergency imports of natural gas
- Minor toll adjustments
- Minor amendments to certificates
- Minor changes to a power line
- Minor amendments to licences
- Approvals under the conditions of a certificate
- Approvals under the conditions of a licence

- Approval of plans, profiles and books of reference
- Leave to open a pipeline
- Leave to cross a pipeline

The limits of each class of non-hearing application are defined in the sections that follow. In any particular case the Board may hold a hearing if the subject appears controversial or of sufficient public interest.

CONSTRUCTION OF MINOR FACILITIES

The facilities which the Board can authorize without a hearing are set out in Section 49 of the Act. They are:

1. Pipelines not exceeding 40 km in length.
2. Ancillary pipeline facilities such as compressor stations, pumping stations and communications.

3. International power lines of operating voltage not exceeding 50 kilovolts. Also any interprovincial lines up to 50 kilovolts that may be "designated" by the Governor in Council as under the Board's jurisdiction.

In each case the Board may exempt the company from various provisions of the Act which apply to major pipelines and power lines (Sections 25 to 29 inclusive and Section 38).

MINOR EXPORTS AND IMPORTS OF ENERGY PRODUCTS

The statutory limits on the Board's authority to approve exports and imports of energy products without a hearing are contained in the National Energy Board Part VI Regulations. They differ for different types of energy and are summarized in Tables 1 and 2 below.

TABLE 1 - MINOR EXPORTS OF ENERGY

Commodity	Limitations	Section of Regulations
Electricity	Not more than 50 megawatts of power or 250 gigawatthours per year of energy for up to three years.	7
Natural Gas	Not more than 60 million cubic metres for a period not exceeding 12 months.	8(1)(a)
	Not more than 30 000 cubic metres per day for a period exceeding 12 months but not exceeding 20 years.	8(1)(b)
	Not more than 3 billion cubic metres in any 12 month period for all orders authorized, for up to 24 months.	8(2),(3) and (4)
Liquefied natural gas	Not more than 90 000 cubic metres for up to 12 months.	8(1)(c)
Ethane	Not more than 160 000 cubic metres for up to 12 months.	8(1)(d)
Propane	By any means, for a period not exceeding 12 months: no quantity limits.	19(2)(a)
	By pipeline, if the same propane has been or will be imported into Canada: no quantity or time limits.	19(2)(b)
Ethylene	No quantity or time limits.	20(2)
Oil — Crude and licensable products	No quantity limits. The period shall not exceed one year.	27(2)

TABLE 2 - MINOR IMPORTS OF ENERGY

Commodity	Limitations	Section of Regulations
Natural Gas	Not more than 60 million cubic metres for up to 12 months, or	8(1)(a)
	Not more than 30 000 cubic metres per day for more than 12 months but not more than 20 years.	8(1)(b)
Liquefied natural gas	Not more than 90 000 cubic metres for up to 12 months.	8(1)(c)
Ethane	Not more than 160 000 cubic metres for up to 12 months.	8(1)(d)
Heavy fuel oil	No quantity limits. The period may not exceed one year. (This is the only oil product subject to import licensing.)	32(2)

EMERGENCY EXPORTS

Where emergency conditions have caused or may cause interruptions in the supply of natural gas to U.S. consumers served by pipelines interconnected with Canadian systems, the Board may authorize emergency exports of gas (Part VI Regulations, Section 22). There are no quantity or time limits to this authority.

A similar provision allows for emergency exports of electricity (Part VI Regulations, Section 23).

EMERGENCY IMPORTS

Where an interruption has occurred or may occur in the supply of natural gas by a pipeline in Canada, the Board may authorize emergency imports of gas (Part VI Regulations, Section 21). There are no quantity or time limits to this authority.

MINOR TOLL ADJUSTMENTS

There is no statutory limitation on the Board's power to adjust pipeline tolls without a hearing. Generally the Board requires a pipeline company to apply for an adjustment whenever its return is projected to differ from the approved return by a specified percentage. In cases where an adjustment may be made without a hearing, the Board normally requires the company to serve copies of its application on all parties who intervened at the company's most recent toll hearing. These parties are then given the opportunity to present their views in writing to the Board. This method has been used to adjust rates of return where there have been changes in the prevailing rates of interest or inflation.

For major oil pipeline companies, changes outside the company's control, such as variations in throughput, additions to rate base from the construction of authorized projects, changes in taxes, and changes in operating and maintenance expenses, are normally authorized without a hearing.

For gas pipeline companies the decision on whether to hold a hearing is usually based on the size of the operation and the extent of the public interest involved.

MINOR AMENDMENTS TO CERTIFICATES

A certificate is the document issued by the Board to authorize the construction and operation of a pipeline or power line. Minor amendments include such variations as a change in the deadline for construction, change in ownership, deletion of items from a certificate, change in compression, change in the name or designation of the line, and small changes in length.

Under Section 17 of the Act, all amendments to certificates are subject to approval by the Governor in Council.

MINOR CHANGES TO A POWER LINE

Under the International Power Line Regulations, the Board may authorize changes to an international power line, or a "designated" interprovincial line, without a hearing, provided the changes do not increase the power transfer capability of the line by more than 25 per cent.

MINOR AMENDMENTS TO LICENCES

Minor amendments to export licences include such variations as changes in export price. Major amendments such as an extension of the licence term with an increase in the total allowable export quantity would normally require a hearing.

Under Section 17 of the Act, all amendments to licences are subject to approval by the Governor in Council.

APPROVALS UNDER THE CONDITIONS OF A CERTIFICATE

Certificates issued by the Board usually contain conditions which must be met by the certificate-holder. Some of these conditions may require submissions to the Board for approval. Such approvals are normally granted without a hearing. Examples are:

- (a) Approval of final or site-specific engineering designs and specifications, together with environmental assessment reports prior to construction.
- (b) Approval of post-construction environmental restoration programs and post-construction reports.
- (c) Approval of post-construction activities, including pipeline hydrostatic testing, culminating in a Board order for Leave to Open.

APPROVALS UNDER THE CONDITIONS OF A LICENCE

Licences issued by the Board contain conditions which must be met by the licensee. Some of these conditions may require submissions to the Board for approval. Such approvals are normally granted without a hearing.

Examples of these are the approval on an annual basis of estimates of energy surplus under certain electric power export licences and the approval of power sales agreements under such licences.

APPROVAL OF PLANS, PROFILES AND BOOKS OF REFERENCE

Once the Board has issued a certificate to authorize the construction of pipeline or power line facilities, the company is required to file plans, profiles and books of reference. These are the documents which show the exact route of the line and provide the legal description of the lands to be acquired. If, after notification, no landowner files a statement of opposition to the route, the Board may approve the plans, profiles and books of reference without a hearing (Act, Section 29.3(2)).

LEAVE TO OPEN A PIPELINE

Under Section 38 of the Act, no pipeline may be placed in service until leave to open has been obtained from the Board. Such leave is granted without a hearing.

Leave to open is not required for international power lines.

LEAVE TO CROSS A PIPELINE

Under Section 77 of the Act, no road, ditch, drain or utility may cross a pipeline, and no excavation or construction may be carried out on the right-of-way, without leave of the Board. Such leave is normally granted without a hearing.

PROCEDURES FOR APPROVAL

All applications should be addressed to the Secretary of the Board.

Most applications to be dealt with without a public hearing are considered by the standing panels of the Board. Certain types of decision, such as amendments to certificates or licences, or those that involve the setting of policy, are referred to the Board as a whole. Where there is no public hearing, the Board makes its decisions on the basis of written information, which may include submissions from interested persons.

There are five standing panels, three corresponding to types of energy and two to transportation, as follows:

Oil	Pipeline
Gas	Financial Regulatory
Electricity	

Each panel consists of three Board Members, three being a quorum of the Board. The membership of the panels is shown in the Board's Annual Report. Any changes in membership are announced in the Regulatory Agenda, published quarterly.

Most of these panels meet at least weekly, and non-hearing applications are dealt with expeditiously. Those needing approval by the Governor in Council require additional time. Approvals by the Board take the form of a licence, an order, a letter or a telex.

